IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 266 OF 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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SHRI GANESH VALABHAI FAMILY TRUST - Applicant(s)
Versus
COMMISSIONER OF INCOME TAX - Opponent(s)

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Appearance :
MRS. SWATI SOPARKAR for Applicant(s).
MR. MANISH R. BHATT for Opponent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Heard Smt. Swati Soparkar, learned Counsel for

the Assessee, and Shri M.R.Bhatt, learned Counsel for the opponent-Revenue.

2. The Tribunal has referred the following questions for opinion of the High Court :

> *"1) Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the assessee trust was not a genuine trust and that assessment of the income in question was liable to be made in the status of A.O.P. and that maximum marginal rate was chargeable under section 167-A?*
>
> *2) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that in the alternative the assessee-Trust was a discretionary trust because of the fact that shares of ultimate and real beneficiaries were unknown or indeterminate and hence provisions of section 164 would not be attracted and tax maximum marginal rate would be*

chargeable?"

3. In a group of matters relating to various Family Trusts, certain orders adverse to the interest of the Assessee were made and the matters came to this Court in a reference made under Section-256(1) of the Income Tax Act.

4. On the earlier occasion, in I.T.R. No.331/1991, decided on 2nd August, 2005, the Division Bench of this Court has held that the finding of the Tribunal that the Trust was not genuine, was proper, but, it referred the matter back to the Tribunal with the observation that the Tribunal would be obliged to decide the question that in whose hands, the income ultimately came and who can be held liable to pay the tax. The Court also directed that the Tribunal may decide the question or may send back the matter to the Income Tax Officer for decision afresh. Following the said judgement of the Division Bench, we have disposed of certain matters with the very same directions. This Reference is also disposed of in the same terms as referred to above.

[***R.S.Garg, J.***]

[***M. R. Shah, J.***]

*kamlesh**